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8 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**
9 **STATE OF CALIFORNIA**

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11 In the Matter of:

12 LELA HENKE-DOBROTH and
13 FRIENDS TO ELECT LELA HENKE-
DOBROTH FOR JUDGE 2010

14 Respondents.

FPPC No. 12/418

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18 **STIPULATION, DECISION, AND ORDER**

19 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
20 respondents Lela Henke-Dobroth and Friends to Elect Lela Henke-Dobroth for Judge 2010
21 (Respondents) hereby agree that this Stipulation will be submitted for consideration by the Fair Political
22 Practices Commission at its next regularly scheduled meeting.

23 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised by this
24 matter and to reach a final disposition without the necessity of holding an additional administrative
25 hearing to determine the liability of Respondents.

26 Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural
27 rights set forth in Government Code sections 83115.5, 11503 and 11523, and in California Code of
28 Regulations, title 2, sections 18361.1 through 18361.9. This includes, but is not limited to the right to

1 personally appear at any administrative hearing held in this matter, to be represented by an attorney at
2 Respondents' own expense, to confront and cross-examine all witnesses testifying at the hearing, to
3 subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over
4 the hearing as a hearing officer, and to have the matter judicially reviewed.

5 It is further stipulated and agreed that Respondents violated the Political Reform Act by failing
6 to report contributions on Late Contribution Reports in violation of Government Code section 84203,
7 subdivision (a), and receiving cash contributions of \$100 or more in violation of Government Code
8 section 84300, subdivision (a), all as described in Exhibit 1. Exhibit 1 is attached hereto and
9 incorporated by reference as though fully set forth herein. Exhibit 1 is a true and accurate summary of
10 the facts in this matter.

11 Respondents agree to the issuance of the Decision and Order, which is attached hereto.
12 Respondents also agree to the Commission imposing an administrative penalty in the total amount of
13 Three Thousand Five Hundred Dollars (\$3,500). Respondents submitted with this Stipulation a
14 cashier's check from Respondents in said amount, made payable to the "General Fund of the State of
15 California," as full payment of the administrative penalty that shall be held by the State of California
16 until the Commission issues its Decision and Order regarding this matter. The parties agree that in the
17 event the Commission refuses to accept this Stipulation, it shall become null and void, and within fifteen
18 (15) business days after the Commission meeting at which the Stipulation is rejected, all payments
19 tendered by Respondents in connection with this Stipulation shall be reimbursed to Respondents.
20 Respondents further stipulate and agree that in the event the Commission rejects the Stipulation, and a
21 full evidentiary hearing before the Commission becomes necessary, neither any member of the
22 Commission, nor the Executive Director, shall be disqualified because of prior consideration of this
23 Stipulation.

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26 Dated: _____
27 Gary S. Winuk, on behalf of the Enforcement Division
28 Fair Political Practices Commission

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Dated: _____
Lela Henke-Dobroth, individually, and on behalf of
Friends to Elect Lela Henke-Dobroth for Judge 2010

DECISION AND ORDER

The foregoing Stipulation of the parties “In the Matter of Lela Henke-Dobroth and Friends to Elect Lela Henke-Dobroth for Judge 2010 FPPC No. 12/418, including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political Practices Commission, effective upon execution below by the Chair.

IT IS SO ORDERED.

Dated: _____
Ann Ravel, Chair
Fair Political Practices Commission

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EXHIBIT 1

INTRODUCTION

Respondent Lela Henke-Dobroth (“Respondent Candidate”) ran for Superior Court judge in the County of Ventura in 2010. Friends to Elect Lela Henke-Dobroth for Judge 2010 (“Respondent Committee”) was her campaign committee. The Political Reform Act (the “Act”)¹ requires candidates to report late contributions of \$1,000 or more within 24 hours of receiving the contribution. The Act also prohibits candidates from receiving cash contributions of \$100 or more. Respondents violated the Act by failing to report late contributions and receiving cash contributions of \$100 or more.

For purposes of this Stipulation, the proposed violations of the Act are as follows:

COUNT 1: Respondents failed to file Late Contribution Reports for three contributions of \$1,000 or more received before the date of the election but after the closing date of the last campaign statement in violation of Section 84203, subdivision (a).

COUNT 2: Respondents received two contributions of \$100 or more in cash in violation of Section 84300, subdivision (a).

SUMMARY OF THE LAW

Duty to File Late Contribution Reports

Candidates must report all late contributions made or received to each office with which the committee is required to file its next campaign statement within 24 hours of receiving or making the contribution. (Section 84203.) A “late contribution” is any contribution that totals \$1,000 or more and is made or received by a candidate or committee before the date of the election but after the closing date of the last campaign statement required to be filed before the election. (Section 82036.)

Cash Contributions

Section 84300, subdivision (a), prohibits a candidate from receiving a campaign contribution of \$100 or more in cash.

¹ The Political Reform Act is contained in Government Code sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

SUMMARY OF THE FACTS

Respondent Candidate ran for Ventura County Superior Court judge in the 2010 Primary Election. She did not win. Respondents were randomly selected for an audit by the Political Reform Audit Program of the Franchise Tax Board (“FTB”).

For the whole campaign Respondents reported \$75,740 in contributions and \$87,742 in expenditures. Respondents reported \$64,411 in contributions received between March 18, 2010 and May 22, 2010, and \$19,102 between May 23, 2010 and June 30, 2010. Respondents did not receive any contributions before March 18, 2010.

The FTB audit showed that Respondents received three contributions before the date of the election but after the closing date of the last campaign statement for which they did not file Late Contribution Reports. Specifically, Respondents received \$2,000 from John Dobroth on May 24, 2010; \$9,500 from Respondent Candidate on June 4, 2010 in the form of a loan; and \$1,000 from Loretta Shuken on June 4, 2010.

The audit also showed that Respondents received cash contributions from George Dalition on March 24, 2010 in the amount of \$4,300 and Carmen Carlson on May 16, 2010 in the amount of \$648. Respondents reported these contributions on their campaign statements.

Accordingly, Respondents committed the following violations:

COUNT 1

Failure to File Late Contribution Reports

Respondents failed to file Late Contribution Reports for three contributions of \$1,000 or more received before the date of the election but after the closing date of the last campaign statement in violation of Section 84203, subdivision (a).

COUNT 2

Receiving Cash Contributions

Respondents received two contributions of \$100 or more in cash in violation of Section 84300, subdivision (a).

CONCLUSION

This matter consists of two counts of violating the Act, which carry a maximum administrative penalty of five thousand dollars (\$5,000) per count.

In determining the appropriate penalty for a particular violation of the Act, the Commission considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. Additionally, the Commission considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6): the seriousness of the violations; the

presence or lack of intent to conceal, deceive or mislead; whether the violation was deliberate, negligent, or inadvertent; whether the Respondents demonstrated good faith in consulting with Commission staff; and whether there was a pattern of violations.

Count 1

Failure to file Late Contribution Reports denies the public information about large contributions made to candidates shortly before an election. In the case *In the Matter of Arturo Chacon and Art Chacon for Water Board 2010*, FPPC No. 08/652 (settlement approved February 10, 2011), the Fair Political Practices Commission (“Commission”) imposed a fine of \$3,000 for a similar violation. In that case, the respondents failed to report receiving five late contributions totaling \$13,000. This represented approximately 26% of the total amount of contributions received by respondents for the election. In the case of *In the Matter of Friends of Rancho Santa Fe Schools and Richard Burdge*, FPPC No. 06/455 (settlement approved on May 21, 2009) the respondents stipulated to four counts for failure to report contributions on Late Contribution Reports. The Commission approved penalties of \$2,500 for one of the counts, which involved a \$15,000 contribution, and \$1,500 for the other three counts, which involved contributions of approximately \$5,000, \$6,000, and \$4,000. In the case of *In the Matter of Mike Briggs, and Mike Briggs for City Council 2010*, FPPC No. 10/494 (default judgment entered on February 10, 2011) the Commission imposed a fine of \$2,500 for respondents’ failure to file a Late Contribution Report. In that case, the respondents failed to report one late contribution of \$1,000. The contribution represented about 5% of the total amount of contributions received by the respondents for that election.

In this case, Respondents failed to file Late Contribution Reports for three contributions totaling \$12,500. This represented approximately 16.5% of the total amount of contributions Respondents received for the campaign, which is not an insignificant amount. Respondents eventually report the late contributions on a semi-annual campaign statement but not until after the election. Also, Respondents failed to file the semiannual statement, as well as two preelection statements, with the Office of the Secretary of State (“SOS”). This meant that while the late contributions Respondents received were eventually reported at the local level, they were never reported at the state level, and in fact, none of the contributions received during the campaign were reported at the state level.²

Count 2

Contributions made in cash are difficult to track which makes it difficult to ensure compliance with campaign reporting requirements and contribution limits. Penalties for accepting cash contributions in similar cases typically range from \$1,000 to \$2,000. For example, in the *In the Matter of Arturo Chacon and Art Chacon for Water Board 2010* case mentioned above, the respondents received three cash campaign contributions of \$100 or more that together totaled \$4,350. They stipulated to one count for receiving the cash contributions and the Commission imposed a penalty of \$2,000 for that count. Similarly, in the case of *In the*

² Respondents’ failure to file copies of their two preelection statements and one semiannual statement with the SOS are violations of the Act. But since Respondents did file the three statements at the local level they have not incurred additional counts for those violations for purposes of this stipulation.

Matter of Hubert Walsh, Hub Walsh for Supervisor, and Marcia B. Hall, FPPC No. 10/771 (settlement approved January 28, 2011), the respondents received seven cash contributions of \$100 or more that all together totaled \$825. Respondents reported the contributions on their campaign statements. The Commission imposed a penalty of \$1,500 for one count of violating the Act. Likewise, in the case of *In the Matter of Gregory Salcido and Gregory Salcido - City Council*, FPPC No. 11/693 (settlement approved December 13, 2012), the Commission imposed a \$1,500 penalty on respondents for receiving a \$2,000 cash contribution. Respondents in that case reported the contribution on their campaign statement. Lastly, in the case of *In the Matter of Tracy McMahan, Committee to Elect Tracy McMahan and Noreen Considine*, FPPC No. 08/668 (settlement approved on January 28, 2011) the respondent loaned her campaign \$2,000 in cash. The respondents had no history of violating the Act, had never run for political office before, and cooperated with the investigation. The Commission imposed a penalty of \$1,000.

In this case, Respondents received a total of \$4,948 in cash contributions, which is similar to the amount in the *Chacon* case. But, like the *Salcido* and *Walsh* cases, Respondents reported the contributions so there was no intent to conceal receipt of those contributions. Also, Respondents have agreed to return the cash contributions.

Overall, Respondents' violations do not appear deliberate. Also, the FTB audit showed that Respondents' campaign largely complied with the requirements of the Act. Further, Respondent Candidate did not win the election. These factors dictate that the violations in this case warrant penalties below the maximum amount.

PROPOSED PENALTY

After considering the factors of Regulation 18361.5, as well as penalties imposed in prior cases, a penalty of \$2,000 for count 1 and \$1,500 for count 2, for a total penalty of \$3,500 is recommended.